

## **TAB 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

NOVOZYMES A/S, and

NOVOZYMES NORTH AMERICA, INC.

Plaintiffs

v.

C.A. No. 05-160-KAJ

GENENCOR INTERNATIONAL, INC., and

ENZYME DEVELOPMENT CORPORATION

Defendants

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiffs, Novozymes A/S (“NZDK”) (“Novozymes”) and Novozymes North America, Inc. (“NZNA”) (collectively, “Novozymes”), by their ~~its~~ attorneys, alleges:

1. This is an action for infringement of a patent under the Patent Act of 1952, Title 35, United States Code, §271 *et seq.* This Court has jurisdiction pursuant to Title 28, United States Code, §§ 1331 and 1338. Venue in this District is proper under Title 28, United States Code, §§ 1391(b) and (c) and 1400(b).

2. Plaintiff NZDK is a Danish corporation having a place of business at Krogshoejvej 36, DK-2880 Bagsvaerd, Denmark.

3. Plaintiff NZNA is a New York Corporation with its principal place of business at 77 Perry Chapel Church Road Franklinton, NC 27525.

4. Indirectly, NZNA is a wholly-owned subsidiary of NZDK. NZNA’s board of directors is dominated by NZDK executives. While NZNA employees are authorized to make day-to-day decisions, NZNA operates at the complete discretion and control of NZDK.

5. NZDK is entitled to all profits earned by NZNA.

6. NZDK issues a consolidated annual report that incorporates the profits and losses of all of its subsidiaries, including NZNA. NZDK's stock is publicly traded based on information that includes the profits and losses of NZNA. Any profits lost by NZNA will be reflected in full in the consolidated annual report issued by NZDK.

7. Upon information and belief, Genencor International, Inc. ("Genencor") is a Delaware corporation having its principal place of business at 925 Page Mill Road, Palo Alto, California 94304 and is subject to the jurisdiction of this Court pursuant to the laws of this State and Fed. R. Civ. P. 4.

8. Upon information and belief, Enzyme Development Corporation ("EDC") is a Delaware corporation having its principal place of business at 21 Penn Plaza, New York, New York 10001 and is subject to the jurisdiction of this Court pursuant to the laws of this State and Fed. R. Civ. P. 4.

9. NZDK Novozymes is the owner by assignment of United States Patent No. 6,867,031 ("the '031 patent") entitled "Amylase Variants," which issued on March 15, 2005. A true and accurate copy of the '031 patent is attached as Exhibit A.

10. The '031 patent claims, *inter alia*, alpha-amylases modified by the deletion of the amino acids at positions equivalent to positions 179 and 180.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13. Upon information and belief, Genencor has made, used, offered for sale, and/or sold in the United States or imported into the United States; continues to make, use, offer for sale; and/or sells in the United States or import into the United States; and has induced others to use, offer for sale, and/or sell in the United States or import into the United States; and continues to induce others to use, offer for sale, and/or sell in the United States or import into the United States, an alpha-amylase product under the tradename Spezyme® Ethyl.

14. Upon information and belief, EDC is Genencor's United States distributor for Genencor's Spezyme® Ethyl alpha amylase, and has used, offered for sale and/or sold in the United States or imported into the United States, and continues to use, offer for sale, and/or sell in the United States or import into the United States, the Spezyme® Ethyl alpha-amylase.

15. Upon information and belief, Spezyme® Ethyl alpha-amylase is an alpha-amylase that differs from a parent *Bacillus (Geobacillus) stearothermophilus* alpha-amylase by the deletion of two amino acids at positions equivalent to positions 179 and 180.

16. Upon information and belief, Genencor and EDC have infringed and continue to infringe the '031 patent.

17. NZNA manufactures, markets, and distributes a variety of biotechnology-based products in the United States on behalf of NZDK. Several of these products compete with Spezyme® Ethyl, including Liquozyme® SC and Termamyl® SC (collectively, "Liquozyme").

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19. On September 29, 2004, Novozymes notified Genencor in writing of the allowance of U.S. patent application serial number 10/025,648, filed December 19, 2001, that subsequently issued as the '031 patent and provided a copy of the allowed claims.

20. Genencor's and EDC's conduct has caused great and irreparable injury to Novozymes. Genencor's and EDC's conduct, unless enjoined and restrained by Order of this Court, will continue to cause great and irreparable injury to Novozymes.

21. Novozymes has no adequate remedy at law for the injuries which it is incurring and will continue to incur from Genencor's and EDC's wrongful conduct, unless they are enjoined from infringing the '031 patent.

WHEREFORE, Novozymes prays that:

a. this Court enter a judgment that U.S. Patent No. 6,867,031 is infringed by Genencor's manufacture, use, offer for sale, or sale in the United States or importation into the United States, or inducement of others to use, offer for sale, and/or sell in the United States or import into the United States the Spezyme® Ethyl alpha amylase;

b. this Court enter a judgment that U.S. Patent 6,867,031 is infringed by EDC's use, offer for sale or sale in the United States or importation into the United States of the Spezyme® Ethyl alpha amylase;

c. this Court enter a judgment that U.S. Patent No. 6,867,031 has been willfully infringed by Genencor's manufacture, use, offer for sale, or sale in the United States or importation into the United States of the Spezyme® Ethyl alpha amylase;

d. this Court enter a judgment that U.S. Patent No. 6,867,031 has been willfully infringed by EDC's use, offer for sale, or sale in the United States or importation into the United States of the Spezyme® Ethyl alpha amylase;

e. this Court enter a judgment that Genencor's and EDC's actions have made this action an exceptional case under 35 U.S.C. § 285;

f. this Court issue a preliminary injunction enjoining and restraining Genencor and EDC and their respective officers, directors, agents, servants, employees and attorneys and those in active concert or participation with them, from the manufacture, use, offer for sale, or sale in the United States, or importation into the United States of the Spezyme® Ethyl alpha amylase and any other product that infringes the '031 patent;

g. this Court issue a permanent injunction enjoining and restraining Genencor and EDC and their respective officers, directors, agents, servants, employees and attorneys and those in active concert or participation with them from the manufacture, use, offer for sale, or sale in the United States, or importation into the United States of the Spezyme® Ethyl alpha amylase and any other product that infringes the '031 patent;

h. this Court grant Novozymes compensatory damages in an amount to be determined at trial including both prejudgment and postjudgment interest;

i. this Court award Novozymes trebled damages;

j. this Court award Novozymes its costs and attorneys' fees; and

k. this Court grant Novozymes such other and further relief as it may deem just and proper.

**NOVOZYMES A/S AND NOVOZYMES  
OF NORTH AMERICA, INC.**

Dated: July 25, 2006

*Attorneys for Plaintiffs  
Novozymes A/S  
and  
Novozymes of North America, Inc.*

---

Josy W. Ingersoll (No. 1088)

Rolin P. Bissell (No. 4478)

Karen E. Keller (No. 4489)

**YOUNG CONAWAY STARGATT  
& TAYLOR, LLP**

1000 West Street, 17th Floor

Wilmington, Delaware 19801

(302) 571-6600

kkeller@ycst.com

Joseph R. Robinson

David Tellekson

Robert C. Sullivan, Jr.

**DARBY & DARBY P.C.**

805 Third Avenue

New York, New York 10022

(212) 527-7700

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

NOVOZYMES A/S, and

NOVOZYMES NORTH AMERICA, INC.

Plaintiffs

v.

C.A. No. 05-160-KAJ

GENENCOR INTERNATIONAL, INC., and

ENZYME DEVELOPMENT CORPORATION

Defendants

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiffs, Novozymes A/S (“NZDK”) and Novozymes North America, Inc. (“NZNA”) (collectively, “Novozymes”), by their attorneys, allege:

1. This is an action for infringement of a patent under the Patent Act of 1952, Title 35, United States Code, §271 *et seq.* This Court has jurisdiction pursuant to Title 28, United States Code, §§ 1331 and 1338. Venue in this District is proper under Title 28, United States Code, §§ 1391(b) and (c) and 1400(b).

2. Plaintiff NZDK is a Danish corporation having a place of business at Krogshoejvej 36, DK-2880 Bagsvaerd, Denmark.

3. Plaintiff NZNA is a New York Corporation with its principal place of business at 77 Perry Chapel Church Road Franklinton, NC 27525.

4. Indirectly, NZNA is a wholly-owned subsidiary of NZDK. NZNA’s board of directors is dominated by NZDK executives. While NZNA employees are authorized to make day-to-day decisions, NZNA operates at the complete discretion and control of NZDK.

5. NZDK is entitled to all profits earned by NZNA.

6. NZDK issues a consolidated annual report that incorporates the profits and losses of all of its subsidiaries, including NZNA. NZDK's stock is publicly traded based on information that includes the profits and losses of NZNA. Any profits lost by NZNA will be reflected in full in the consolidated annual report issued by NZDK.

7. Upon information and belief, Genencor International, Inc. ("Genencor") is a Delaware corporation having its principal place of business at 925 Page Mill Road, Palo Alto, California 94304 and is subject to the jurisdiction of this Court pursuant to the laws of this State and Fed. R. Civ. P. 4.

8. Upon information and belief, Enzyme Development Corporation ("EDC") is a Delaware corporation having its principal place of business at 21 Penn Plaza, New York, New York 10001 and is subject to the jurisdiction of this Court pursuant to the laws of this State and Fed. R. Civ. P. 4.

9. NZDK is the owner by assignment of United States Patent No. 6,867,031 ("the '031 patent") entitled "Amylase Variants," which issued on March 15, 2005. A true and accurate copy of the '031 patent is attached as Exhibit A.

10. The '031 patent claims, *inter alia*, alpha-amylases modified by the deletion of the amino acids at positions equivalent to positions 179 and 180.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13. Upon information and belief, Genencor has made, used, offered for sale, and/or sold in the United States or imported into the United States; continues to make, use, offer for sale; and/or sells in the United States or import into the United States; and has induced others to use, offer for sale, and/or sell in the United States or import into the United States; and continues to induce others to use, offer for sale, and/or sell in the United States or import into the United States, an alpha-amylase product under the tradename Spezyme® Ethyl.

14. Upon information and belief, EDC is Genencor's United States distributor for Genencor's Spezyme® Ethyl alpha amylase, and has used, offered for sale and/or sold in the United States or imported into the United States, and continues to use, offer for sale, and/or sell in the United States or import into the United States, the Spezyme® Ethyl alpha-amylase.

15. Upon information and belief, Spezyme® Ethyl alpha-amylase is an alpha-amylase that differs from a parent *Bacillus (Geobacillus) stearothermophilus* alpha-amylase by the deletion of two amino acids at positions equivalent to positions 179 and 180.

16. Upon information and belief, Genencor and EDC have infringed and continue to infringe the '031 patent.

17. NZNA manufactures, markets, and distributes a variety of biotechnology-based products in the United States on behalf of NZDK. Several of these products compete with Spezyme® Ethyl, including Liquozyme® SC and Termamyl® SC (collectively, "Liquozyme").

[REDACTED]

[REDACTED]

19. On September 29, 2004, Novozymes notified Genencor in writing of the allowance of U.S. patent application serial number 10/025,648, filed December 19, 2001, that subsequently issued as the '031 patent and provided a copy of the allowed claims.

20. Genencor's and EDC's conduct has caused great and irreparable injury to Novozymes. Genencor's and EDC's conduct, unless enjoined and restrained by Order of this Court, will continue to cause great and irreparable injury to Novozymes.

21. Novozymes has no adequate remedy at law for the injuries which it is incurring and will continue to incur from Genencor's and EDC's wrongful conduct, unless they are enjoined from infringing the '031 patent.

WHEREFORE, Novozymes prays that:

a. this Court enter a judgment that U.S. Patent No. 6,867,031 is infringed by Genencor's manufacture, use, offer for sale, or sale in the United States or importation into the United States, or inducement of others to use, offer for sale, and/or sell in the United States or import into the United States the Spezyme® Ethyl alpha amylase;

b. this Court enter a judgment that U.S. Patent 6,867,031 is infringed by EDC's use, offer for sale or sale in the United States or importation into the United States of the Spezyme® Ethyl alpha amylase;

c. this Court enter a judgment that U.S. Patent No. 6,867,031 has been willfully infringed by Genencor's manufacture, use, offer for sale, or sale in the United States or importation into the United States of the Spezyme® Ethyl alpha amylase;

d. this Court enter a judgment that U.S. Patent No. 6,867,031 has been willfully infringed by EDC's use, offer for sale, or sale in the United States or importation into the United States of the Spezyme® Ethyl alpha amylase;

e. this Court enter a judgment that Genencor's and EDC's actions have made this action an exceptional case under 35 U.S.C. § 285;

f. this Court issue a preliminary injunction enjoining and restraining Genencor and EDC and their respective officers, directors, agents, servants, employees and attorneys and those in active concert or participation with them, from the manufacture, use, offer for sale, or sale in the United States, or importation into the United States of the Spezyme® Ethyl alpha amylase and any other product that infringes the '031 patent;

g. this Court issue a permanent injunction enjoining and restraining Genencor and EDC and their respective officers, directors, agents, servants, employees and attorneys and those in active concert or participation with them from the manufacture, use, offer for sale, or sale in the United States, or importation into the United States of the Spezyme® Ethyl alpha amylase and any other product that infringes the '031 patent;

h. this Court grant Novozymes compensatory damages in an amount to be determined at trial including both prejudgment and postjudgment interest;

i. this Court award Novozymes trebled damages;

j. this Court award Novozymes its costs and attorneys' fees; and

k. this Court grant Novozymes such other and further relief as it may deem just and proper.

**NOVOZYMES A/S AND NOVOZYMES  
OF NORTH AMERICA, INC.**

Dated: July 25, 2006

*Attorneys for Plaintiffs  
Novozymes A/S  
and  
Novozymes of North America, Inc.*

---

Josy W. Ingersoll (No. 1088)

Rolin P. Bissell (No. 4478)

Karen E. Keller (No. 4489)

**YOUNG CONAWAY STARGATT  
& TAYLOR, LLP**

1000 West Street, 17th Floor

Wilmington, Delaware 19801

(302) 571-6600

kkeller@ycst.com

Joseph R. Robinson

David Tellekson

Robert C. Sullivan, Jr.

**DARBY & DARBY P.C.**

805 Third Avenue

New York, New York 10022

(212) 527-7700